IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

RSA.No. 569 of 2006()

AS.89/1999 of ADDL. DISTRICT COURT, PATHANAMTHITTA
OS.318/1997 of MUSNIFF COURT,ADOOR

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: APPELLANTS/APPELLANTS/DEFENDANTS

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1. JOSE, PADIPPURA VEETTIL KIZHAKKETHIL,
KADAMPANAD VADAKKEMURI, KADAMPANAD VILLAGE.

2. P.G.BABY, PADIPPURA VEETTIL KIZHAKKETHIL
KADAMPANAD VADAKKEMURI, KADAMPANAD VILLAGE.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENT:RESPONDENT/ PLAINTIFF

JESSY, KUNNEERADATHU THEKKETHIL,
KADAMPANAD VADAKKEMURI, KADAMPANAD VILLAGE.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 569 OF 2006

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Dated this the 3rd day of October, 2007

JUDGMENT

Defendants in O.S.318/1997 on the file of Munsiff Court, Adoor are the appellants. Plaintiff is the respondent. Respondent is the legally wedded wife of the first appellant. Second appellant is his father. The marriage of the respondent with the first appellant was solemnised on 10.6.1990. They were living together as husband and wife and a female child was born in that wedlock. At the time of institution of the suit, the child was aged five years. Because of the strained relationship, they are now living separately. Respondent instituted the suit seeking a decree for realisation of Rs.97,000/- contending that at the time of marriage Rs.40,000/- was entrusted by her father in the presence of first appellant to second appellant as the share of the property of respondent and in addition father of

the respondent has provided ornaments of 15 sovereigns which respondent was wearing at the time of marriage and first appellant and his family members are maintaining hatred towards respondent as father of the respondent had not arranged a job for first appellant in gulf countries and proceedings under section 125 of Code of Civil Procedure was taken before Judicial Magistrate of First Class, Adoor and first appellant agreed to pay maintenance at the rate of Rs.210/- to the respondent and Rs.120/- to the child. It was contended that respondent is entitled to get back the amount paid to respondents and also the value of gold ornaments. Appellants resisted the suit contending that no amount was entrusted as alleged and respondent was only wearing ornaments of five sovereigns and it was available with respondent and therefore she is not entitled to the decree sought for.

2. On the side of respondent apart from herself as PW1, two other witnesses were examined

as Pws.2 and 3. On the side of appellants, first appellant was examined as DW1 and second appelant as DW2 and a witness as DW3. The order in M.C.81/96 of Judicial First Class Magistrate, Adoor was marked as Ext.B1. Learned Munsiff on the evidence found that at the time of marriage Rs.40,000/- was received by the appellants and they are liable to return the same with interest at 6% per annum. A decree was passed directing appellants to pay Rs.40,000/- with proportionate cost and interest from the date of the suit. On the failure to prove that ornaments as claimed by respondent was entrusted with appellants claim for the value of the ornaments was disallowed. Appellants challenged the decree and judgment before District Court, Pathanamthitta in A.S.89/1999. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellants

was heard.

3. The argument of learned counsel is that courts below did not properly appreciate the evidence and non-examination of the witnesses was not taken into consideration and evidence was appreciated on the wrong premise that there is a practice of giving dowry, when in fact there is no such practice and so the decree and judgment are to be set aside.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

5. The only question that arises for considertion is whether Rs.40,000/- was paid to the appellants on behalf of the respondent, at the time of marriage of the respondent with first appellant. Apart from the evidence of respondent as PW1, trial court appreciated the evidence of Pws.2 and 3 and found that in fact Rs.40,000/- was paid as claimed by respondent. Learned Munsiff elaborately discussed the evidence of Pws.1 to 3

and Dws.1 to 3 and found that the evidence of Pws.1 to 3 is reliable and credible, while the evidence of appellants cannot be relied on. The first appellate court, the last fact finding court reappreciated the evidence and confirmed the finding that Rs.40,000/- was paid, as the share due to the respondent, at the time of her marriage with first appellant. Though learned counsel persuaded me to reappreciate the evidence, in exercise of the powers of this court under section 100 of Code of Civil Procedure, it is not for this court to reappreciate the evidence and substitute findings of this court or that of the trial court and the appellate court. As there is no substantial question of law involved in the appeal, it is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006